

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

GENERAL MOTORS CORPORATION
and SATURN CORPORATION,

Case No. 07-14464

Plaintiffs,

Hon. Victoria A. Roberts

v.

UNITED STATES OF AMERICA,

Defendant.

OPINION AND ORDER
AFTER IN CAMERA REVIEW

I. INTRODUCTION

This matter is before the Court on Plaintiffs' Motion to Compel Production of Documents Withheld by Defendant Under Claims of Deliberative Process Privilege [Doc. 49]. On October 30, 2009, the Court issued an Order granting in part and denying in part Plaintiff's Motion. The Court ordered the Government to produce 10 "Category 2" documents for an *in camera* review by the Court. The Court reserved opinion on those documents pending completion of its *in camera* review. The Court **GRANTS** in part and **DENIES** in part with respect to those documents.

II. ANALYSIS

In response to Plaintiffs' Motion to Compel, the Government cited only the deliberative process privilege with respect to these Category 2 documents. Accordingly, the Court reviewed the 10 post-publication documents only with respect to the

deliberative process privilege.

The deliberative process privilege shields intra-governmental communications relating to matters of law or policy from disclosure. See *National Wildlife Federation v. U.S. Forest Service*, 861 F.2d 1114, 1116-17 (9th Cir. 1988). The deliberative process privilege is narrowly construed. *Redland Soccer Club v. Dept. of Army of the U.S.*, 55 F.3d 827, 856 (3rd Cir. 1995). To come within the deliberative process privilege, a document must be both "predecisional," meaning it is "received by the decision maker on the subject of the decision prior to the time the decision is made," and "deliberative," the result of the consultative process *Rugiero v. United States Department of Justice*, 257 F.3d 534, 550 (6th Cir. 2001).

With these principles in mind, the Court finds:

1. The deliberative process privilege does not apply to Bates Nos. US-10069, US-10070, US-10071, US-10072, US-10073, US-10076, US-10078, US-10079, US-10082, US-10083, US-10084, US-10085, US-10086 and US-11273. These documents must be produced, absent another privilege.

2. The deliberative process privilege applies to Bates No. US-11296, US-11297, and Treas 1 - Treas 9. These documents are not discoverable.

IV. CONCLUSION

Plaintiffs' Motion to Compel is **GRANTED** in part and **DENIED** in part.

IT IS ORDERED.

s/Victoria A. Roberts

Victoria A. Roberts
United States District Judge

Dated: December 23, 2009

The undersigned certifies that a copy of this document was served on the attorneys of record by electronic means or U.S. Mail on December 23, 2009.

s/Linda Vertriest _____
Deputy Clerk